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FRANK C. NICHOLAS (33,983)
Name of applicant, assignee or registered representative

/Frank C. Nicholas/
Signature

August 2, 2006
Date of Signature

PATENT
Case No. AUS920010652US1
(9000/56)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:)

KULVIR SINGH BHOGAL, ET AL.)

Serial No.: 10/062,328)

Filed: JANUARY 31, 2002)

For: METHOD AND SYSTEM FOR)

SPLITTING A BANDWIDTH AMONG)

A PLURALITY OF NETWORK)

TRANSACTIONS)

Examiner: NGUYEN, THANH T.

Group Art Unit: 2144

APPEAL BRIEF

Mail Stop **Appeal Brief - Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully present their Brief on Appeal as follows:

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1. REAL PARTY IN INTEREST

The real party in interest is Assignee INTERNATIONAL BUSINESS MACHINES CORPORATION, a corporation of New York, having a place of business at Armonk, New York 10504.

2. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Claims 1-18 are currently pending in the present application, and are the claims on appeal. See, Claims Appendix.

4. STATUS OF AMENDMENTS

Appellant did not file an after final request for reconsideration under 37 C.F.R.

§1.116 in response to a Final Office Action dated February 24, 2006.

Claims 1-18 as appended hereto are in their original form.

5. SUMMARY OF THE INVENTION

FIG. 4 illustrates a bandwidth splitting program 80 serving as a system for splitting a bandwidth among a plurality of network transactions NT_1 - NT_X . As illustrated in FIG. 5, bandwidth splitting program 80 employs a thread controller 81, a graphical user interface 82, and a thread scheduler 83 for implementing a flowchart 100 illustrated in FIG. 6 to thereby split the bandwidth among the network transactions NT_1 - NT_X . See, U.S. Patent Application Serial No. 10/062,328 at page 6, line 18 to page 7, line 6.

Referring to FIG. 6, thread controller 81 (FIG. 5) of bandwidth splitting program 80 is the structure serving during a stage S102 of flowchart 100 as the “means for monitoring a port address for an initiation of the network transaction” as recited in dependent claim 8; the structure serving during a stage S105 of flowchart 100 as the “means for detecting an initiation of the network transaction” during a stage S102 of flowchart 100 as recited in dependent claim 9; and the structure serving during a stage S106 of flowchart 100 as the “means for creating a thread for controlling a processing of the network transaction in response to a detection of the initiation of the network transaction” as recited in dependent claim 10. See, U.S. Patent Application Serial No. 10/062,328 at page 7, line 7 to page 8, line 14.

Graphical user interface 82 of bandwidth splitting program 80 is the structure serving during a stage S108 of flowchart 100 as the as the “means for displaying a communication requesting a priority of a network transaction” as recited in independent claim 7. See, U.S. Patent Application Serial No. 10/062,328 at page 8, lines 15-24.

Thread scheduler 83 of bandwidth splitting program 80 is the structure serving during a stage S110 of flowchart 100 as the as the “means for receiving an input indicating the priority of the network transaction” as recited in independent claim 7; and the structure serving during a stage S112 of flowchart 100 as the “means for generating a priority schedule based upon the priority corresponding to the network transaction as indicated by the input” as recited in dependent claim 11. *See, U.S. Patent Application Serial No. 10/062,328* at page 9, lines 1-6.

Thread controller 81 (FIG. 5) of bandwidth splitting program 80 is the structure serving the structure serving during a stage S114 of flowchart 100 as the “means for executing the thread to control the processing of the network transaction in accordance with the priority schedule” as recited in dependent claim 12. *See, U.S. Patent Application Serial No. 10/062,328* at page 9, lines 6-8.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-18 stand finally rejected under 35 U.S.C. §102(e) as being anticipated
by U.S. Patent No. 6,628,615 B1 to *Joseph*.

7. ARGUMENT

Joseph. As illustrated in FIG. 2, *Joseph* teaches a transport agent 200 for receiving messages 220 that may include a priority, and if not, *Joseph* teaches the transport agent 200 will assign a priority to an incoming message. See, Joseph at column 4, line 37 to column 5, line 8. An understanding of transport agent 200 of *Joseph* reveals that transport agent 200 does not display a communication requesting a priority of an incoming message 220 as required by independent claims 1, 7 and 13, because an incoming message 220 will either contain a pre-assigned priority or will be assigned a priority by transport agent 200. In fact, the term “display” is never used in any capacity in *Joseph*. Furthermore, since an incoming message 220 will either contain a pre-assigned message or be assigned a priority by transport agent 200, an understanding of transport agent 200 of *Joseph* reveals that transport agent 200 does not monitor a port address for an initiation of a message 220 for purposes of subsequent displaying a communication request for a priority of the incoming message 220 as required by dependent claims 2, 3, 8, 9, 14 and 15.

Still referring to FIG. 2, upon receiving an incoming message 220, transport agent 200 forwards information about the incoming message 220 on second level channels 201 to a flit handler 203 whereby flit handler 203 will compose a latency sensitive flit 250 and/or a bandwidth sensitive flit 250' in accordance with the forward message information. Each message information received by flit handler 203 includes a message type and a priority whereby flit handler 203 composes a flit 250 and/or a flit

250' from the message information based on a message type and priority of the message information and transmit the composed flit 250 and/or flit 250' based solely on the message type via a scheduler that multiplexes the flits 250/250' from first level channels to a network 206. For example, flit handler 203 will pause a composition of a flit 250 and/or a flit 250' with a lower priority upon receiving message information corresponding to a flit 250 and/or a flit 250' of a higher priority to thereby compose the high priority flit 250 and/or a flit 250' prior to finishing the composition of the lower priority flit 250 and/or a flit 250'. Thus, the higher priority flit 250 and/or a flit 250' will be provided to the multiplexing scheduler prior to the lower priority flit 250 and/or a flit 250' will be provided to the multiplexing scheduler. See, Joseph at column 7, lines 1-20.

An understanding of flit handler 203 of *Joseph* reveals that flit handler 203 does not include threads for controlling a composition and transmission of flits as required by dependent claims 4, 6, 10, 12, 16 and 18, because the use of threads would negate the need to pause the composition of a lower priority flit in view of receiving a higher priority flit during the composition of the lower priority flit and a need to multiplex the composed flits. In fact, the term "thread" is never used in any capacity in *Joseph*. Furthermore, an understanding of the scheduler of *Joseph* reveals the scheduler does not multiplex and transmit the composed flits based on their priorities as required by dependent claims 5, 13 and 15.

In summary, *Joseph* teaches a multiplexing of flits as opposed to a splitting of a bandwidth among flits in a multitasking manner. Thus, *Joseph* is no more than

cumulative to the Background section of the present application. See, *U.S. Patent Application Serial No. 10/062,328* at page 1, line 12 to page 2, line 7.

Anticipation. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). See, MPEP §2131.

Group 1: Claims 1, 7 and 13. The Appellant respectfully traverses the anticipation rejection of claims 1, 7 and 13, because *Joseph* fails to show "displaying a communication requesting a priority of a network transaction" in as complete detail as contained in independent claims 1, 7 and 13. Withdrawal of the rejection of independent claims 1, 7 and 13 under 35 U.S.C. §102(e) as being anticipated by *Joseph* is therefore respectfully requested.

Group 2: Claims 2, 8 and 14. The Appellant respectfully traverses the anticipation rejection of claims 2, 8 and 14, because *Joseph* fails to show “monitoring a port address for an initiation of the network transaction” in as complete detail as contained in dependent claims 2, 8 and 14. Withdrawal of the rejection of dependent claims 2, 8 and 14 under 35 U.S.C. §102(e) as being anticipated by *Joseph* is therefore respectfully requested.

Group 3: Claims 3, 9 and 15. The Appellant respectfully traverses the anticipation rejection of claims 3, 9 and 15, because *Joseph* fails to show “wherein the communication is displayed subsequent to a detection of the initiation of the network transaction” in as complete detail as contained in dependent claims 3, 9 and 15. Withdrawal of the rejection of dependent claims 3, 9 and 15 under 35 U.S.C. §102(e) as being anticipated by *Joseph* is therefore respectfully requested.

Group 4: Claims 4, 10 and 16. The Appellant respectfully traverses the anticipation rejection of claims 4, 10 and 16, because *Joseph* fails to show “creating a thread for controlling a processing of the network transaction in response to a detection of the initiation of the network transaction” in as complete detail as contained in dependent claims 4, 10 and 16. Withdrawal of the rejection of dependent claims 4, 10 and 16 under 35 U.S.C. §102(e) as being anticipated by *Joseph* is therefore respectfully requested.

Group 5: Claims 5, 11 and 17. The Appellant respectfully traverses the anticipation rejection of claims 5, 11 and 17, because *Joseph* fails to show “generating a priority schedule based upon the priority corresponding to the network transaction as indicated by the input” in as complete detail as contained in dependent claims 5, 11 and 17. Withdrawal of the rejection of dependent claims 5, 11 and 17 under 35 U.S.C. §102(e) as being anticipated by *Joseph* is therefore respectfully requested.

Group 6: Claims 6, 12 and 18. The Appellant respectfully traverses the anticipation rejection of claims 6, 12 and 18, because *Joseph* fails to show “executing the thread to control the processing of the network transaction in accordance with the priority schedule” in as complete detail as contained in dependent claims 6, 12 and 18. Withdrawal of the rejection of dependent claims 6, 12 and 18 under 35 U.S.C. §102(e) as being anticipated by *Joseph* is therefore respectfully requested.

Dated: **August 2, 2006**

Respectfully submitted,

CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, Illinois 60201
Phone: (847) 905-7111
Fax: (847) 905-7113

/FRANK C. NICHOLAS/
FRANK C. NICHOLAS
Registration No. 33,983
Attorney for Appellant

CLAIMS APPENDIX

1. A method for splitting a bandwidth among a plurality of network transactions, said method comprising:

displaying a communication requesting a priority of a network transaction; and

receiving an input indicating the priority of the network transaction.
2. The method of claim 1, further comprising:

monitoring a port address for an initiation of the network transaction.
3. The method of claim 2, further comprising:

detecting an initiation of the network transaction,

wherein the communication is displayed subsequent to a detection of the initiation of the network transaction.
4. The method of claim 3, further comprising:

creating a thread for controlling a processing of the network transaction in response to a detection of the initiation of the network transaction.
5. The method of claim 4, further comprising:

generating a priority schedule based upon the priority corresponding to the network transaction as indicated by the input.

6. The method of claim 5, further comprising:

executing the thread to control the processing of the network transaction in

accordance with the priority schedule.
7. A system for splitting a bandwidth among a plurality of network transactions, said
system comprising:

means for displaying a communication requesting a priority of a network
transaction; and

means for receiving an input indicating the priority of the network transaction.
8. The system of claim 7, further comprising:

means for monitoring a port address for an initiation of the network transaction.
9. The system of claim 8, further comprising:

means for detecting an initiation of the network transaction,

wherein the communication is displayed subsequent to a detection of the
initiation of the network transaction.

10. The system of claim 9, further comprising:

means for creating a thread for controlling a processing of the network transaction in response to a detection of the initiation of the network transaction.

11. The system of claim 10, further comprising:

means for generating a priority schedule based upon the priority corresponding to the network transaction as indicated by the input.

12. The system of claim 11, further comprising:

means for executing the thread to control the processing of the network transaction in accordance with the priority schedule.

13. A computer program product in a computer readable medium for splitting a bandwidth among a plurality of network transactions, said computer program product comprising:

computer readable code for displaying a communication requesting a priority of a network transaction; and

computer readable code for receiving an input indicating the priority of the network transaction.

14. The computer program product of claim 13, further comprising:

computer readable code for monitoring a port address for an initiation of the

network transaction.

15. The computer program product of claim 14, further comprising:

computer readable code for detecting an initiation of the network transaction,

wherein the communication is displayed subsequent to a detection of the initiation of the

network transaction.

16. The computer program product of claim 15, further comprising:

computer readable code for creating a thread for controlling a processing of the

network transaction in response to a detection of the initiation of the network

transaction.

17. The computer readable code of claim 16, further comprising:

computer readable code for generating a priority schedule based upon the priority

corresponding to the network transaction as indicated by the input.

18. The method of claim 17, further comprising:

computer readable code for executing the thread to control the processing of the network transaction in accordance with the priority schedule.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.